IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.32315-M of 2006

Date of Decision: July 10, 2007

Rupinder Kaur and another

...Petitioners

VERSUS

Avtar Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Y.P.Khullar, Advocate,
for the petitioners.

Mr.Gurcharan Dass, Advocate,
for the respondent.

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RANJIT SINGH, J.

Mandeep Singh, petitioner No.2 is a minor son born out of wedlock between Rupinder Kaur petitioner No.1 and Avtar Singh, sole respondent. The marriage between petitioner No.1 and respondent got into trouble and led to their separation. They are now

divorced. Rupinder Kaur filed application under Section 125 Cr.P.C. on 25.5.1996 praying for grant of maintenance of Rs.500/- per month. She pleaded that she did not have any source of income, whereas respondent (her husband) was working at a Petrol Pump and earning Rs.4000/- per month. As per the averment, he is also keeping buffaloes and is having agriculture income as well. Relying upon the evidence and the material produced before him, Judicial Magistrate Ist Class, Ludhiana granted a sum of Rs.1200/- per month as maintenance to the child, petitioner No.2, which was the only demand raised in the application as petitioner No.1 Rupinder Kaur has re-married in the meantime. While awarding this amount of maintenance, Judicial Magistrate observed that even a daily wager would be able to earn a sum of Rs.3000/- per month and having regard to the fact that respondent is cultivating his own land, the above referred sum was awarded as maintenance for the child.

The respondent impugned the said order by filing a revision before Addl.Sessions Judge (Adhoc), Fast Track Court, Ludhiana, who has reduced this maintenance amount to Rs.500/- per month on the ground that the applicant had claimed the maintenance at this rate in his application and as such Magistrate could not have competently awarded maintenance at the rate of Rs.1200/- per month.

This order passed by Addl.Sessions Judge (Adhoc), Fast Track Court, Ludhiana is impugned in the present petition filed under Section 482 Cr.P.C. Notice was issued in this case and reply on behalf of the respondent has been filed.

The counsel for the petitioners, by referring to the case of

Kamaldeep Kaur and another Vs. Balwinder Singh, 2005(3) RCR (Civil) 40 has urged that court can competently award maintenance more than the amount claimed by the applicant in the maintenance application. In this case, this court has observed that there is no specific restriction under Section 125 Cr.P.C. that the Magistrate cannot award more than the amount claimed in the application and that section rather imposes duty to award compensation, which the court would think just and reasonable.

As has been averred in the petition, the provisions of Section 125 Cr.P.C. were amended w.e.f. 24.9.2001. Accordingly, the court is now competent to award compensation more than Rs.500/- as could be awarded before the amendment. In Kamaldeep Kaur's case (supra), this court noticed that this amendment was with objects and reasons and that in view of the price rise and cost of living, retaining a maximum ceiling at Rs.500/- is not justified. It was further noticed that this amendment is a social piece of legislation and is brought in to achieve a social object. It is accordingly required to be interpreted liberally. In this regard, reliance has also been placed on the case of ***Ramfool Moolchand Mina Vs. Smt.;Jagrati Ramfool Mina, 2001(2) RCR (Criminal) 143.***

There cannot be much dispute that provision, like Section 125 Cr.P.C. is a social piece of legislation. The purpose of such like provision is to grant just maintenance. In such like cases, it would not be fair to impose restriction in the grant of maintenance, specially so when the said provision stands amended removing the restriction, if any, as was the provision originally enacted. It is rather difficult for any child or wife to maintain herself with dignity in the sum as was

provided in section as a maximum for the purpose of grant of maintenance.

The revisional court had reduced the sum granted by the trial Magistrate from Rs.1200/- to Rs.500/- only on the ground that this was the sum claimed in the application. This consideration would not be a valid reason to reduce the sum when viewed in the background that this provision is a social piece of legislation and so should not be bound in such like parameters. Precedent in this regard can be seen in the case of ***Nagappa Vs. Gurudayal Singh, JT 2002(10) SC 144,*** wherein the Hon'ble Supreme Court held that there would not be any restriction on the Tribunal or the court to award compensation exceeding the amount claimed under the Motor Vehicles Act. In such like cases, the main function of the court or the Tribunal is to award just and reasonable compensation on the basis of the evidence produced. There is no valid justification on the part of the counsel for the respondent to submit that such enhanced compensation would be awardable only from the date of the amendment and not from any date prior thereto. The Magistrate in this case has awarded maintenance from the date of application. Since on the date of amendment the application filed by the petitioners was pending, no reasons can be advanced to reduce the maintenance as awarded by the Magistrate at least from the date of amendment. In the case of ***Kamaldeep kaur (supra)*** this court, relying upon the case of ***Ramfool Moolchand Mina (supra)*** has held that the amendment would apply to all pending cases as well.

The counsel for the respondent, however, by relying upon Section 6 of the General Clauses Act would say that the

provision of the amended section would not apply to the present case. In support of his submission, he has referred to the case of ***Shiv Shakti Coop. Housing Society, Nagpur Vs. M/s. Swaraj Developers and Ors., 2003(2) RCR (Civil) 676.*** In my view, the ratio laid down in this judgment would not apply to the facts of the present case. What all was held in this case is that where a provision of statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them and if final relief has not been granted before the omission and there is no scope of granting it afterwards. It was further held that in case of replacement by new provision without a saving clause, it can be reasonably inferred that the intention of the legislature was that pending proceedings shall continue but fresh proceedings for the same purpose may be initiated under the new provision. It is to be noticed that here is not a case of any omission of a provision from the statute. Here only some words have been omitted from the provision which otherwise is retained. The purpose is rather obvious and that is to remove restriction for awarding the quantum of maintenance, which was earlier restricted to a sum not exceeding Rs.500/-. The provision continues to exist on the statute. Section 6 of General Clauses Act, while providing the effect of repeal says:-

> Where this Act or any Central Act or Regulation made after commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless, a different intention appears, the repeal shall not – x x x x x
>
> So where from the repeal a different intention is appearing then the effect of this provision will not follow.

No intention is seen for which it can be said that omission was not to effect rights or obligations.

In this background, Section 6 of the General Clauses Act can not strictly apply to have any effect on the omission in this case. This amendment is meant to achieve a social purpose in view of rising cost of living index and hence required to be interpreted liberally.

In addition to other factors, the courts were required to inform themselves that application for maintenance in this case was made by a minor child. A father can not be allowed to shirk from the responsibility to maintain the child and to bring him up in the best possible manner. He can be expected to voluntarily come forward to maintain the child rather than taking him to the court by impugning the order granting maintenance. The enhanced maintenance, as such, could not have been denied to the child at least from the date of amendment.

The impugned order passed by Addl.Sessions Judge (Adhoc), Fast Track Court, Ludhiana is set-aside. Child is to live with dignity in his formative years. Inflation has made the sum of Rs.1200/- as awarded look rather meager for the needs of the child. Having regard to the material on record, petitioner No.2 Mandeep Singh, minor son of respondent Avtar Singh, would be entitled to receive maintenance at the rate of Rs.1500/- per month from the date of amendment as a sum of Rs.1200/- awarded in this case by the Magistrate is erring on the lower side. Of course, the child would receive maintenance at the rate of Rs.500/- from the date of application to the date of amendment.

The present petition accordingly is allowed in the above

mentioned terms and the orders impugned shall stand modified in terms of the present order.

July 10, 2007 (RANJIT SINGH)
ramesh JUDGE